IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1968

No. 29

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY, *Petitioner*,

v.

UNITED TRANSPORTATION UNION, *et al.*, *Respondents*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

Opinions Below

The opinion of the Court of Appeals (A. 166-169) is reported at 401 F. 2d 368. The opinion of the District Court on motion to vacate the judgment (A. 157-164) is reported at 267 F. Supp. 572. The original oral opinion of the District Court (A. 142-146) is not reported.

Jurisdiction

The judgment of the Court of Appeals was entered October 7, 1968 (A. 170-171). The petition for a writ of certiorari was filed January 4, 1969, and was granted March 3, 1969. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

Statutes Involved

The statute principally involved is Section 6 of the Railway Labor Act (45 U.S.C. § 156):

> "Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Other provisions of the Railway Labor Act involved in the case are printed in Appendix A, pp. 1a-7a, *infra*.

Question Presented

An adjustment board has determined under Section 3 of the Railway Labor Act (45 U.S.C. § 153) that petitioner railroad has the right under its existing collective bargaining contract to establish outlying work assignments. Respondent union does not contest the conclusive effect of that adjudication of the petitioner's contractual right (Br. Opp. 3). However, upon learning that the railroad in-

tended to exercise its right to establish outlying assignments, the union served a notice under Section 6 of the Act (45 U.S.C. § 156) proposing that the agreement be changed to abrogate that right. The question presented is:

> Does Section 6 of the Act prohibit the railroad from establishing outlying assignments during negotiations upon the union's notice—or, more fundamentally, does Section 6 forbid a railroad from taking action allowed under its existing collective bargaining contract during negotiations upon a union proposal to amend the contract to prohibit such action?[1]

Statement

Petitioner Detroit and Toledo Shore Line Railroad (Shore Line) instituted this action in order to enjoin a strike threatened by the Brotherhood of Locomotive Firemen and Enginemen (BLF&E)[2] for the purpose of preventing the Shore Line from establishing two "outlying assignments"[3] at Trenton, Michigan (A. 5-11). The BLF&E counterclaimed to enjoin the Shore Line from establishing such assignments (A. 15-16). The District Court dismissed the Shore

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[1] Certain passages in respondent's brief in opposition to certiorari suggest the possibility that respondent may argue alternative grounds to support the judgment below. (Br. Opp. 7-8.) If respondent does advance such arguments, we shall respond to them in our reply brief. At this point, we restrict our analysis to the issue upon which certiorari was granted, the only relevant issue litigated in and decided by the courts below.

[2] Since this case was decided below, the BLF&E has merged with certain other unions representing operating employees—the Brotherhood of Railroad Trainmen (BRT), the Order of Railway Conductors & Brakemen, and the Switchmen's Union of North America—to form the United Transportation Union (UTU). The UTU has been substituted for the BLF&E as the union respondent in this Court (A. 172), but the union respondent is referred to in this brief as the BLF&E because it is so referred to throughout the record.

[3] As used herein, the term "outlying assignment" means an assignment with a reporting point for going on and off duty located elsewhere than at petitioner's principal yard in Toledo.

Line's complaint and granted the injunction sought by the BLF&E. The Court of Appeals affirmed. The Shore Line seeks a reversal.

The main line of the Shore Line runs from Lang Yard in Toledo, Ohio, 50 miles north to Dearoad Yard near Detroit and River Rouge, Michigan (A. 27-28, 147). Prior to 1961, Lang Yard was the reporting point for train and engine service crews going on and off duty (A. 148). These crews performed switching both at Lang Yard and at points to the north (A. 27-28), including switching for a number of large customers in the vicinity of Edison Station, Trenton, Michigan, 35 miles north of Lang Yard (A. 19, 27-28, 56, 57, 91-92). This arrangement required payment of considerable overtime to crews going from Lang Yard to the point at which they performed their work (A. 29-30), and contributed to growing congestion at Lang Yard (A. 55-56).

Because of a need to reduce expenditures and an increasing volume of business at Trenton, the Shore Line decided in 1961 to establish outlying assignments at Trenton (A. 29-30, 132, 148, 166). Accordingly, on February 21, 1961, the Shore Line notified the BLF&E and the other unions that represent operating employees of its intention to do so and inquired as to the facilities that would be required for employees going on and off duty at Trenton (A. 132, 148).

The unions responded on April 28, 1961, by serving the Shore Line with a notice pursuant to Section 6 of the Railway Labor Act (45 U.S.C. § 156) requesting negotiation of an agreement with respect to the working conditions of employees affected by the proposed establishment of a new terminal point (A. 30-31, 104, 148). In addition, the unions asked the Shore Line to defer the establishment of the new terminal point long enough to permit them to prepare proposals regarding the matter. The Shore Line agreed to the unions' request (A. 31, 133), the unions prepared detailed

proposals (A. 31, 105-108, 148), and the parties conferred with respect to the proposals. The conferences failed to settle the matter, however (A. 31-32, 135-136, 148).

In consequence, conferences were terminated as of June 5, 1962 (A. 32, 135-136). The unions then invoked the mediatory services of the National Mediation Board (A. 32), but mediation was unsuccessful. Accordingly, the Mediation Board terminated its services and thereafter closed its file on April 3, 1963, two years after the service of the unions' Section 6 notice (A. 32, 109, 138-139, 148-149).

In the meantime, the Shore Line had refrained from establishing a terminal at Trenton. However, in the latter part of 1962, while the parties' dispute was pending in mediation, the Shore Line established two new work assignments originating at Dearoad, near Detroit, eleven miles north of Trenton (A. 19, 32-34, 56). At first, crews reporting at Dearoad ran a locomotive from Dearoad to Trenton to perform switching required at that point. After a time, however, the Shore Line started transporting crews from Dearoad to Trenton by taxi (A. 19, 34). Because of the establishment of the Dearoad assignments, and because the Shore Line had discontinued switching for Monsanto at Trenton pursuant to an alternating annual arrangement with the New York Central, the Shore Line concluded that it no longer needed to establish a terminal at Trenton and so advised the Mediation Board (A. 43, 54-55, 137).

Following the establishment of the Dearoad assignments and the termination of mediation, the Shore Line and the BLF&E made further attempts to negotiate a revision of their collective bargaining contract but were unable to do so (A. 114). The BLF&E then submitted to a Special Board of Adjustment established under Section 3 of the Railway Labor Act (45 U.S.C. § 153) the question whether the establishment of outlying assignments at Dearoad had violated

the parties' existing agreement (A. 34-35, 167)[4] and notified the Shore Line and the Mediation Board that it was withdrawing the 1961 Section 6 notice because the adjustment board would "in all probability settle the issue of starting and tieing up a crew at other than Lang Yard" (A. 114; see also A. 34-35, 63-64, 65, 149). Before the adjustment board, the BLF&E contended that in a previous agreement the Shore Line had limited itself with respect to establishing outside assignments (A. 110).

On November 30, 1965, the adjustment board sustained the Shore Line's contention that its existing agreement permitted the establishment of outlying assignments (A. 35-36, 110, 167). It ruled that "[t]here is nothing in the rules of agreement which precludes this carrier from establishing an outside assignment" (A. 110). It accordingly denied employees' claims based on the establishment of the Dearoad assignments (A. 110). As the Court of Appeals observed, the adjustment board's determination of the parties' "minor dispute" as to the "interpretation of the contract is binding on the parties" under Section 3 of the Railway Labor Act (A. 167 n. 1).[5]

When the adjustment board had confirmed the Shore Line's right under the existing collective agreement to establish outlying work assignments, the Shore Line revived its plan to establish such assignments at Trenton. It did so not only because of the overtime and transportation expense involved in transporting employees to Trenton (see A. 29-30, 55), but also because the amount of switching required

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[4] See also Br. Opp. 3; and Tr., Oct. 7, 1966, pp. 39-40, included in the appendix to plaintiff-appellant's brief in the court below, at 71a-72a.

[5] See, *e.g.*, *Gunther* v. *San Diego & A.E.R. Co.*, 382 U.S. 257 (1965). As this Court has stated: "The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement. . . . The grievance procedure is . . . a part of the continuous collective bargaining process." *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574, 581 (1960).

both at Lang Yard and at Trenton had grown in recent years. In addition to Monsanto, Lever Brothers, Detroit Edison, Schwewnigan, and Niemann's Lumber (A. 28), McLouth Steel had requested service at Trenton (A. 43, 55). According to the Shore Line's General Manager, it simply was "not feasible to operate all of those trains out of Lang" (A. 55); taking an engine out of Lang Yard to perform switching at Trenton had become "more difficult because of the heavier switching operations that we have at Lang" (A. 56).

Accordingly, on January 24, 1966, the Shore Line notified the unions, including the BLF&E, that it intended "to construct welfare facilities at our Trenton Freight Office to accommodate train and engine crews at that location," but that "before doing so" it "felt that all of the parties should be in agreement, if possible, as to the accommodations necessary" (A. 140-141). It therefore invited the unions to inspect the proposed facilities (A. 140-141). On January 27, 1966, the BLF&E responded by serving the Shore Line with a new Section 6 notice, demanding that the existing agreement be amended to provide that "[a]ll road service runs and/or assignments will originate and terminate at Lang yard (Toledo, Ohio)" (A. 112; see also A. 42, 149). That proposed amendment to the agreement would abrogate the Shore Line's right to establish outlying work assignments (A. 149).

The parties conferred but were unable to reach an agreement with respect to the BLF&E demand for a change in the existing contract (A. 115-119) The BLF&E then sought mediation by the Mediation Board (A. 122). On June 28, 1966, the Board docketed the matter but has not yet assigned a mediator (A. 42, 113, 125-129, 149). In the meantime, the Shore Line completed facilities for employees at Trenton (A. 24-25). In October 1966, the Shore Line was required

to resume switching for Monsanto at Trenton, under the alternating annual arrangement with the New York Central (A. 28, 43) That same month it was required to furnish new switching service to McLouth Steel at Trenton (A. 52-53, 55). Accordingly, on September 19, 1966, the Shore Line took the action it had been entitled to take under its agreement but had deferred during five years of negotiations. It posted a bulletin, effective September 26, 1966, establishing two new work assignments originating at Trenton (A. 28, 42-43, 111, 150).

The BLF&E and the BRT then threatened to strike (A. 71-72, 98-99). The Shore Line filed this action to enjoin the threatened strike (A. 3, 150). The BLF&E counterclaimed to enjoin assignments originating at Trenton (A. 15-16). The Shore Line actually operated the Trenton assignments for one day and then transferred them to Dearoad *pendente lite* (A. 43).

The District Court dismissed the Shore Line's complaint[6] and enjoined the Shore Line from "establishing or operating a terminal point at Edison Station, Trenton, Michigan, or any other terminal point not previously established" until the pending "major" dispute with the BLF&E "has been fully handled to a conclusion" (A. 152-153, 154-155). The injunction was based, notwithstanding the intervening establishment of outlying assignments at Dearoad, on a finding that "[f]or many years prior to 1961, Lang Yard in Toledo, Ohio, was the terminal point, for train and engine crews going on and off duty, from which plaintiff operated to perform switching service for the Monsanto Chemical Company plant at Trenton, Michigan, where no terminal point had

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[6] The District Court dismissed the Shore Line's complaint with respect to the BRT, which had never withdrawn the 1961 notice, on the ground that the BRT was free to strike because it had exhausted "major dispute" procedures with respect to the 1961 notice (A. 151). That determination has not been appealed.

previously been established or operated by plaintiff" (A. 148). On the basis of that finding, the District Court ruled that by establishing assignments at Trenton after the service of the union's most recent Section 6 notice, the Shore Line had violated Section 6 of the Railway Labor Act (45 U.S.C. § 156), which provides that carriers and unions shall give thirty days' notice of "an intended change in agreements affecting rates of pay, rules, or working conditions," and that "[i]n every case where such notice of intended change has been given, . . . rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by Section 5 of this Act, by the Mediation Board . . ." (A. 152-153).[7]

The Shore Line moved for reconsideration. It pointed out that in *Williams* v. *Terminal Co.*, 315 U.S. 386, 402-403 (1942), this Court had held that under Section 6 the making of a proposal for an agreement "does not change the authority of the carrier" because the "prohibitions of § 6 against change of wages or conditions pending bargaining . . . are aimed at preventing changes in conditions *previously fixed by collective bargaining agreements*" (emphasis added). In addition, the Shore Line pointed out that the National Mediation Board has stated repeatedly, in accordance with this Court's holding in *Williams*, that

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[7] Initially, the District Court concluded that petitioner had violated Section 5 of the Act (45 U.S.C. § 155, p. 5a, *infra*) as well as Section 6 (A. 152). Since 1934, Section 5 has contained a status quo requirement that applies during the thirty-day cooling-off period after the Mediation Board has terminated its services. (48 Stat. 1195 (1934); see *Hearings on S. 3266 before the Senate Committee on Interstate Commerce*, 73d Cong., 2d Sess. (1934), p. 21.) However, the Mediation Board has not terminated its services in this case (A. 149), and therefore the status quo provision in Section 5 is not yet applicable. Moreover, in its Answer and Counterclaim the BLF&E claimed only that petitioner had violated the status quo requirement of Section 6 (A. 14, 15, 16). In these circumstances, the District Court discussed only the application of Section 6 in its opinion denying petitioner's motion to vacate the judgement (A. 161-164), and the Court of Appeals relied on Section 6 alone when it affirmed the judgment (A. 168).

"the serving of a section 6 notice for a new rule or a change in an existing rule does not operate as a bar to carrier actions which are taken under rules currently in effect"—*i.e.*, that "section 6 is intended to maintain the contract as it existed between the parties until the provisions of the act have been complied with." NMB, 34th Ann. Rep. 23 (1968). The District Court held, however, that this Court's holding in *Williams* applies only to the rare case in which there is no collective agreement in existence; that the Mediation Board had misinterpreted Section 6; and that rejection of the Mediation Board's interpretation of Section 6 was necessary lest the work of the Mediation Board "be greatly hampered" (A. 162-163).

On appeal, the Sixth Circuit affirmed. The Shore Line contended, as it had in the District Court, that the status quo provision in Section 6 applies only to changes in rates of pay, rules, or working conditions which are embodied in the collective bargaining contract. The Court of Appeals rejected that contention, however, holding it "lacking in merit for the reasons stated in the opinion of the District Judge" (A. 168.)

For the reasons stated below, that holding should be reversed.

Summary of Argument

1. During the three decades since the enactment of the Railway Labor Act in 1926, it has been commonly accepted that under the status quo provision of Section 6 of the Act (45 U.S.C. § 156), the rights and duties of the parties to a "major dispute" over proposed changes in collective bargaining agreements are measured by the parties' pre-existing agreements. What the agreements forbid remains forbidden pending exhaustion of the statutory major dispute procedures. And what the agreements do not forbid remains permissible pending exhaustion of those procedures.

The effect of the status quo provision of Section 6 is simply to extend or prolong the life of agreements pending negotiations for change. See *Manning* v. *American Airlines, Inc.*, 329 F. 2d 32, 34 (2d Cir., 1964); *Brotherhood of Railroad Trainmen* v. *Akron & B.B. R. Co.*, 385 F. 2d 581, 593 (D.C. Cir., 1967).

This generally accepted interpretation of Section 6 has been consistently followed by the National Mediation Board for many years and has been expressed in the Board's instructions to mediators, in its communications to interested parties, and in its annual reports. In such instructions and communications, the Board has stated that Section 6 does not "mean that proposed revisions of agreement rules and the invocation of this Board's services on such proposed changes has the effect of staying the application of existing rules unless and until such existing rules are amended or revised." (See p. 9a, *infra.*) In its annual reports the Mediation Board has stated repeatedly, with respect to the situation following the service of a Section 6 notice "proposing to restrict the right of the carrier to unilaterally act in a certain area," that Section 6 "is intended to maintain the contract as it existed between the parties until the provisions of the act have been complied with. . . . [T]he rights of the parties which they had prior to serving the notice of intention to change remain the same during the period the proposal is under consideration. . . . [T]he serving of a section 6 notice for a new rule or a change in an existing rule does not operate as a bar to carrier actions which are taken under rules currently in effect." NMB, 34th Ann. Rep. 23 (1968). Not only is the long standing interpretation of Section 6 by the Mediation Board entitled to great weight, but it destroys the justification advanced by the District Court for its decision in this case—that "[i]f the carrier can unilaterally change the working conditions of its employees while such con-

ditions are the subject of mediation efforts by the Board the work of the Board would be greatly hampered" (A 162). The Board thinks otherwise.

2. The Mediation Board's interpretation of Section 6 conforms to the understanding of that provision manifested by the uniform rulings of courts with respect to the issue prior to the decision of the District Court in this case. In 1942, this Court held, in *Williams* v. *Terminal Co.*, 315 U.S. 386 (1942), that the "prohibitions of § 6 against change of wages or conditions pending bargaining . . . are aimed at preventing changes in conditions previously fixed by collective bargaining agreements." 315 U.S., at 402-403; see also *Order of Conductors* v. *Pitney*, 326 U.S. 561, 565 (1946). That ruling settled the issue, for practical purposes, until the decision below in this case. When the question did arise, as it did on infrequent occasions, the lower courts uniformly followed the holding in *Williams* that Section 6 prohibits changes, pending bargaining, only in conditions previously fixed by contract—that the parties' rights as they existed under pre-existing agreements remain unchanged during negotiations with respect to proposed changes in such agreements. See, *e.g.*, *Southern Ry. Co.* v. *Brotherhood of Locomotive Firemen, Etc.*, 337 F. 2d 127, 132-133 (D.C. Cir., 1964); *Hilbert* v. *Pennsylvania R. Co.*, 290 F. 2d 881, 885 (7th Cir., 1961); *Norfolk & P.B.L. R. Co.* v. *Brotherhood of Rail. Train.*, 248 F. 2d 34, 41 (4th Cir., 1957); *Railway Clerks* v. *Santa Fe R. Co.*, 50 CCH Lab. Cas. ¶ 19,299 (N.D. Ill., 1964); *Flight Engineers* v. *Western Air Lines*, 43 CCH Lab. Cas. ¶ 17,064 (S.D. Calif., 1961).

3. The generally accepted understanding of Section 6 followed both by the Mediation Board and by the courts in previous Railway Labor Act cases was clearly correct, in view of the manifest intent of the Congress evidenced in the text and scheme of the Railway Labor Act and

confirmed by the legislative history of the enactment. From the initial statutory prescription of the parties' basic duty under the Act—"to exert every reasonable effort to make and maintain agreements" (45 U.S.C. § 152 First)—throughout the detailed procedural provisions of the Act, the Act evidences an intent that the agreements of railroads and unions should govern their rights and obligations, rather than any scheme fashioned and imposed by the Congress. This intent was made explicit in extensive testimony by the railroad and union representatives who presented the proposed legislation to the Congress, Donald Richberg for the unions and Alfred Thom for the railroads. Richberg testified in support of the Act, for example, that "[c]ontract is the foundation of all our successful relations . . . [a]nd that we seek to preserve in here," while Thom testified that the first "leading principle" of the proposed legislation was that "the relationship of the parties shall be controlled by agreements." *Hearings on H.R. 7180 before the House Committee on Interstate and Foreign Commerce,* 69th Cong., 1st Sess. (1926), pp. 16, 113. In view of the statutory scheme and its history, it cannot reasonably be claimed that Congress intended in Section 6 to provide a vehicle by which the union and railroad parties to a collective bargaining agreement might obliterate each other's rights as they exist under the agreement simply by serving each other with proposals to change the agreement.

4. Moreover, if it is permitted to stand, the decision below will have thoroughly undesirable consequences for railroad operations and railway labor relations. The decision below would allow union general chairmen to block operational changes whenever they see fit to do so. Railroads must continue to change if they are to serve the public as they should. Moreover, just as the decision below would permit the unilateral destruction of carriers' rights, so too it would sanction unilateral destruction of employees'

rights. More fundamentally, the decision below would encourage the service of Section 6 notices not for the purpose of obtaining agreements but simply to prevent change of one kind or another—to destroy existing rights. That would lead to stultification of the collective bargaining process. As union representatives have testified, "everyone knows" that "a proposal under the Railway Labor Act is the starting point, not the end, of collective bargaining." (Testimony of Lester Schoene, *Hearings on S. 3548 before the Special Subcommittee of the Senate Committee on the Judiciary,* 86th Cong., 2d Sess. (1960), p. 186.) The decision below would turn the Act upside down by making the service of a Section 6 notice serve ends in itself.

Argument

The decision below permits a union, simply by serving a Section 6 notice, to obliterate a carrier's rights as they exist under pre-existing agreements for as long as it takes the parties to exhaust statutory procedures that are "purposely long and drawn out." *Railway Clerks* v. *Florida E. C. R. Co.,* 384 U.S. 238, 246 (1966). Yet, as this Court has stated, the Railway Labor Act was not designed to permit a party to achieve "unilaterally . . . what the Act requires be done by the other orderly procedures." *Id.,* at 247. The decision below is contrary to the commonly accepted understanding of Section 6 and to the intent of the Congress and if permitted to stand will have intolerable effects on railroad operations and labor relations.

1. *The decision below is contrary to the commonly accepted understanding of Section 6 reflected in communications, instructions and reports of the National Mediation Board.*

During the three decades since the enactment of the Railway Labor Act in 1926 it has been generally understood

that under the status quo provision of Section 6 of the Act (45 U.S.C. § 156), the rights and duties of the parties to a "major dispute" over proposed changes in collective bargaining agreements are measured by the parties' pre-existing agreements. When the Congress provided that the parties must give notice of any change "in agreements affecting rates of pay, rules, or working conditions," and that "where such notice" is given "rates of pay, rules, or working conditions shall not be altered" pending negotiations, the Congress meant that the parties' contracts should continue to govern their rights and duties pending exhaustion of the major dispute procedures with respect to proposals to change those contracts. The purpose of Section 6 was not to suspend or destroy rights and obligations as the parties had seen fit to arrange them, but rather to prolong or extend agreements during the time it takes to exhaust "purposely long and drawn out" major dispute procedures prescribed by Sections 5 through 10 of the Act (45 U.S.C. §§ 155-160). See *Manning* v. *American Airlines, Inc.*, 329 F. 2d 32, 34 (2d Cir., 1964); *Brotherhood of Railroad Trainmen* v. *Akron & B.B.R. Co.*, 385 F. 2d 581, 593 (D.C. Cir., 1967).

This general understanding of the effect of Section 6 has been followed by the National Mediation Board for years and has been expressed in the Board's reports, in communications to interested parties, and in instructions to mediators. Thus, the reports of the Mediation Board have stated:

> "Another type of situation involves the case where an organization serves a proper section 6 notice on the carrier proposing to restrict the right of the carrier to unilaterally act in a certain area. Handling of the proposal through various stages of the Railway Labor Act has not been completed when complaints will sometimes be made that the carrier is not observing the

'status quo' provisions of section 6 when it institutes an action which would be contrary to the agreement if the proposed section 6 notice had at that time been accepted by both parties.

"Section 6 states that where notice of intended change in an agreement has been given, rates of pay, rules, and working conditions as expressed in the agreement shall not be altered by the carrier until the controversy has been finally acted upon in accordance with specified procedures. Positively stated, section 6 is intended to maintain the contract as it existed between the parties until the provisions of the act have been complied with. When the procedures of the act have been exhausted without an agreement between the parties on the 30-day notice of intended change, the carrier may alter the contract to the extent indicated in the 30-day notice, and the organization is free to take such action as it deems advisable under the circumstances. The other provisions of the contract are not affected and remain unchanged. In brief, *the rights of the parties which they had prior to serving the notice of intention to change remain the same during the period the proposal is under consideration, and remain so until the proposal is finally acted upon. The Board has stated in instances of this kind that the serving of a section 6 notice for a new rule or a change in an existing rule does not operate as a bar to carrier actions which are taken under rules currently in effect.*" NMB, 34th Ann. Rep. 23 (1968) (emphasis added).[8]

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[8] *Accord,* NMB, 33d Ann. Rep. 36 (1968); 32d Ann. Rep. 29 (1967); 31st Ann. Rep. 25 (1966); 30th Ann. Rep. 29 (1964); 29th Ann. Rep. 32 (1963); 28th Ann. Rep. 28 (1962); 27th Ann. Rep. 32 (1961); see also Award No. 293, Special Board of Adjustment No. 465, September 12, 1966, Pet. App. 38a-39a.

As the Mediation Board indicated in the foregoing passage from its most recent annual report, it has frequently faced the question presented by this case in performing its statutory duties. Thus, in 1960 the Board issued instructions to mediators in which it set forth its interpretation of the status quo provision in Section 6. See Appendix B, pp. 8a-11a, *infra*. Those instructions quoted the Board's rejection of a complaint that a railroad had violated its obligation to maintain the "status quo" by changing "territorial limits and assignments" following the service of a Section 6 notice regarding the matter (p. 9a, *infra*):

> "The Board considered your letter of August 10, 1956 in Executive Session on August 16, 1956. The Carrier has taken the position that the proposed rearrangement of sections and the consequent changes in forces are permissible under the present agreement, and if a dispute exists as to the application of the present rules it should be taken before the National Railroad Adjustment Board.
>
> "The National Mediation Board does not understand Section 6 of the Railway Labor Act to mean that proposed revisions of agreement rules and the invocation of this Board's services on such proposed changes has the effect of staying the application of existing rules unless and until such existing rules are amended or revised.
>
> "In view of the language of Section 2, Seventh of the Railway Labor Act stating 'No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this act.', the Board fails to find any basis for complying with your request."

The Mediation Board's consistent interpretation of Section 6 is entitled to great weight in construing the statute. "When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration." *Udall* v. *Tallman*, 380 U.S. 1, 16-18 (1965); see also 1 Davis, Administrative Law Treatise § 5.06 (1958). The Board's consistent interpretation also destroys the justification advanced by the District Court in support of its ruling in this case—that "[i]f the carrier can unilaterally change the working conditions of its employees while such conditions are the subject of mediation efforts by the [Mediation] Board, the work of the Board would be greatly hampered." (A. 162.) The Board itself thinks otherwise.

2. *The decision below is contrary to virtually all previous Railway Labor Act decisions with respect to the question presented.*

The Mediation Board's interpretation of Section 6 conforms to the understanding of that provision manifested in the uniform judicial decisions with respect to the question prior to this case. The first, leading, and in this case controlling, decision was this Court's decision in *Williams* v. *Terminal Co.*, 315 U.S. 386, 401-403 (1942).[9] In that case, redcaps at the Dallas Union Terminal, who previously had been unrepresented, selected the Clerks' union as their collective bargaining representative. The union then served the Terminal with a request "for a conference to negotiate an agreement for working conditions and other related subjects. . . ." 315 U.S., at 402. For at least thirteen years before that, redcaps had been permitted to keep their tips without accounting for them to the Terminal. 33 F. Supp.

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[9] The relevant portion of the *Williams* decision is the portion relating to *Pickett* v. *Union Terminal Co.*, No. 1023, O.T. 1940.

244, at 248. While the request for a contract was pending, however, the Fair Labor Standards Act became effective. The Terminal notified the redcaps that henceforth they would be required to account for their tips and the Terminal would pay them the difference between the tips and the statutory minimum wage. The redcaps contended that the Terminal had changed their rates of pay and working conditions in violation of Sections 2 Seventh [10] and 6 of the Railway Labor Act. This Court rejected that contention, holding that:

> "The institution of negotiations for collective bargaining does not change the authority of the carrier. The prohibitions of § 6 against change of wages or conditions pending bargaining and those of § 2, Seventh, are aimed at preventing changes in conditions previously fixed by collective bargaining agreements. Arrangements made after collective bargaining obviously are entitled to a higher degree of permanency and continuity than those made by the carrier for its own convenience and purpose." 315 U.S., at 402-403.

The decision below—that Section 6 prohibits changes following the service of a Section 6 notice even when the carrier's right to make the changes under the parties' pre-existing agreements has been confirmed by an adjustment

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[10] Section 2 Seventh provides that "[n]o carrier . . . shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of the Act" (45 U.S.C. § 152 Seventh, p. 2a, *infra*). This provision does not bar a carrier from changing rates of pay, rules, or working conditions which are *not* embodied in agreements. *Illinois Central R. Co.* v. *Brotherhood of Loc. Fire. & Eng.*, 332 F.2d 859 (7th Cir., 1964); *St. Louis, S.F.&T.Ry. Co.* v. *Railroad Yardmasters*, 328 F.2d 749 (5th Cir., 1964); *Locomotive Firemen* v. *New Haven Railroad*, 59 CCH Lab. Cas. ¶ 13,217 (D. Conn., 1968).

board and therefore cannot be disputed—is contrary to the unqualified holding in *Williams*. The District Court was of the view that the holding in *Williams* applies only to cases in which the parties do not yet have a collective bargaining contract—the situation in *Williams*. (See A. 163.) But that is a fact about *Williams* that looks the other way. As this Court stated, "[a]rrangements made after collective bargaining obviously are entitled to a higher degree of permanency and continuity than those made by the carrier for its own convenience and purpose." 315 U.S., at 403. Therefore, the rights of a carrier *after* the parties have entered into a collective bargaining contract (as in this case) should be entitled to more, not less, protection than the rights of a carrier before there is any contract. The decision of the adjustment board (pp. 5-6, *supra;* A. 110) established conclusively that under its existing agreements the Shore Line had the right to establish outlying assignments.

Moreover, the District Court's notion that *Williams* is distinguishable on the ground that Section 6 is not applicable where a party wishes to establish an agreement for the first time rather than to change a pre-existing agreement is at war both with this Court's well established view respecting the scope of Section 6 and with the plain purpose of that provision. In its landmark exposition of the Railway Labor Act in *Elgin, J. & E.R. Co.* v. *Burley*, 325 U.S. 711, 723 (1945), this Court indicated that a proposal to make an agreement where, to use the District Court's phrase in the case at bar, "there [is] no agreement in existence to change" (A. 163) *is* a request for a "change in agreements" within the meaning of Section 6. Thus, the Court explained that the "major" dispute procedures of the Act relate "to disputes over the *formation* of collective agreements or *efforts to secure them,*" and that such disputes "arise *where there is no such agreement* or

where it is sought to change the terms of one . . ." (emphasis added). If that were not so—that is, if the District Court's basis for distinguishing *Williams* were correct—a union could strike to obtain an agreement without first exhausting the major dispute procedures in the absence of a pre-existing agreement, something Congress obviously did not intend when it enacted the Railway Labor Act "to provide a machinery to prevent strikes," *Texas & N.O.R. Co. v. Ry. Clerks*, 281 U.S. 548, 565 (1930). That conclusion is confirmed by legislative history which demonstrates that Section 6 was intended to apply to requests for new agreements as well as to requests for the revision of existing agreements. For example, the union's representative, Donald Richberg, testified that the provisions that were later incorporated in Section 6 would "provide the means *for obtaining* and changing agreements and for adjusting disputes arising under agreements. . . ." *Hearings on S. 2646 before the Senate Committee on Interstate Commerce*, 68th Cong., 1st Sess. (1924), p. 18 (emphasis added). Similarly, the railroads' representative, Alfred Thom, described the kind of dispute that would be subject to Section 6 as a dispute that "relates to changes in rates of pay, rules, or working conditions, *to new agreements with respect to these matters. . . .*" *Hearings on S. 2306 before the Senate Committee on Interstate Commerce*, 69th Cong., 1st Sess. (1926), pp. 10-11 (emphasis added). For these reasons, the redcaps' written demand for a collective bargaining agreement in *Williams* was sufficient to invoke the procedures of Section 6 and thus to bring into play the status quo requirements of Section 6. See 316 U.S., at 402-403; cf. *Pullman Co.* v. *Order of Ry. Conductors & Brakemen*, 316 F. 2d 556, 562 (7th Cir., 1963). What the Court held in *Williams* was not that Section 6 does not apply in the absence of a prior agreement, as the District Court believed,

but that the carriers' action had not violated Section 6 because it had not violated an existing agreement. 315 U.S., at 402-403.

Until this case, *Williams* settled the question presented. Accordingly, until very recently there has been little additional litigation with respect to the matter. This Court itself has never retreated from its holding in *Williams*. On the contrary, in *Order of Conductors* v. *Pitney*, 326 U.S. 561, 565 (1946), it reiterated the view that "the only conduct which would violate § 6 is a change of those working conditions which are 'embodied' in agreements." And all lower courts that encountered the issue, prior to this case, likewise decided it in accordance with this Court's ruling in *Williams* and thus are squarely opposed to the decision below.

For example, the understanding of Section 6 expressed in the *Williams* decision underlies the decision of the District of Columbia Circuit in *Southern Ry. Co.* v. *Brotherhood of Locomotive Firemen, Etc.*, 337 F. 2d 127 (D.C. Cir., 1964). In that case the Southern served the BLF&E with a notice proposing the abrogation of rules requiring assignment of firemen to diesel locomotives. 337 F. 2d, at 130. For years the collective agreement had provided that "[a] fireman . . . shall be employed on all locomotives," and, accordingly, the Southern had assigned firemen to all locomotives including diesel locomotives. 337 F. 2d, at 129. However, it began operating diesel locomotives without firemen, claiming that the existing agreement required only that it employ firemen on such locomotives when there were firemen available who were on the seniority roster when the agreement was made. The BLF&E sought an injunction against operation of locomotives without firemen

> "... because the Section 6 notice served by Southern, proposing to change the existing agreement with re-

spect to use of firemen on locomotives, was still pending before the National Mediation Board and Section 6 of the Railway Labor Act prevented the change in working conditions involved in operating trains without firemen in such circumstances." 337 F. 2d, at 131.

The District Court granted injunctive relief, and the Court of Appeals affirmed. The Court of Appeals reasoned that to allow "a change in the long-standing interpretation . . . which had been given by the parties to the existing contract" would "in substance and effect change the contract itself." 337 F. 2d, at 132. However, the Court went on to hold—and this is the salient aspect of the decision for present purposes—that the injunction could not remain in effect if an adjustment board were to determine that operation of diesels without firemen was permissible under the existing agreement:

"[W]e think that the District Court properly ordered . . . that the injunction will remain effective until either the NRAB interprets the contract in Southern's favor or until the contract is modified or changed under the Railway Labor Act. The NRAB of course is not ordinarily concerned with Section 6 proposals, but here the contract change proposed under Section 6 would be put into effect immediately by the change in the long-standing prior interpretation and application of the old contract. To be effective and to effectuate the command of Section 6, the injunction under the Section 6 claim must, pending exhaustion of the statutory processes for negotiation of a new contract under the Act, properly preclude such a change in interpretation until such change is authorized by the NRAB, even granting that ordinarily the change could not be enjoined." 337 F. 2d, at 132-133.

In short, notwithstanding the carrier's long-established practice, the Court of Appeals held that the injunction against the operation of diesels without firemen could not remain in effect if an adjustment board determined that such operation was permitted by the existing agreement. That ruling accorded with the Mediation Board's interpretation of Section 6 and this Court's ruling in *Williams*. But in the case now before this Court, the Sixth Circuit affirmed an injunction against the establishment of outlying assignments *after* an adjustment board had determined conclusively that the establishment of such assignments *is* permitted by the existing agreement.

The understanding of Section 6 confirmed by this Court's decision in *Williams* likewise underlies the Seventh Circuit's decision in *Hilbert* v. *Pennsylvania R. Co.*, 290 F. 2d 881 (7th Cir., 1961). In that case, the Seventh Circuit held that a railroad's right to change the location of crew terminals, following the service of a notice proposing modification of existing agreements with respect to the matter (see 290 F. 2d, at 885; 307 F. 2d, at 24-25 n. 1), turned on whether such changes were permissible under the applicable rule established by the existing agreements—"[t]*hat rule remains in effect.*" 290 F. 2d, at 885. More recently, in *Illinois Central R. Co.* v. *Brotherhood of Railroad Train.*, 398 F. 2d 973 (7th Cir., 1968), the Seventh Circuit approved a holding that a railroad's right to reduce the number of trainmen assigned to certain crews, following the service of a notice proposing a prohibition of such reductions (398 F. 2d, at 975 n. 2), depended on whether the reductions were permitted by rules already in existence. 398 F. 2d, at 975, 979. See also *Rutland Ry. Corp.* v. *Brotherhood of Locomotive Eng.*, 307 F. 2d 21 (2d Cir., 1962), *reversing* 188 F. Supp. 721 (D. Vt., 1960), in which the Second Circuit reached conclusions similar to those of the Seventh Circuit

in *Hilbert*. In each of these cases, the unions were denied injunctive relief sought on the basis of Section 6 in the absence of an adjustment board determination that the carrier's actions were *prohibited* by existing rules. 290 F. 2d, at 882, 885-886; 398 F. 2d, at 975, 979; 188 F. Supp., at 723, 728. In the case now before this Court, however, the union was granted such relief *notwithstanding* an adjustment board determination that the carrier's actions were *permitted* by existing rules."[11]

The Fourth Circuit likewise has had occasion to express its adherence to the interpretation of Section 6 endorsed in this Court's decision in *Williams*. In *Norfolk & P.B.L.R. Co.* v. *Brotherhood of Rail. Train.*, 248 F. 2d 34 (4th Cir., 1957), the Fourth Circuit said:

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[11] In its brief in opposition (p. 12), the BLF&E contended that these decisions are not in point because they "involved minor as well as major disputes." In each case the parties disagreed as to whether the carrier's actions were permitted by existing rules. Thus, in addition to the major dispute created by the service of a Section 6 notice proposing a change in the applicable agreement, each case also involved a minor dispute as to the interpretation of the agreement. So, too, in the instant case, there once was a minor dispute between the parties as to the Shore Line's right under the existing agreement to establish outlying assignments. That dispute has now been determined, in the Shore Line's favor, and it is conceded that the existing agreement does not prohibit the establishment of such assignments. (See pp. 5-6, *supra;* A. 110.) The Shore Line's victory before the adjustment board obviously does not *weaken* the Shore Line's right to establish outlying assignments. Accordingly, the absence of a minor dispute does not serve to distinguish the Shore Line's case; it makes it *a fortiori*.

It should be noted that in *Hilbert* the union not only was denied a status quo order based on Section 6 (the aspect of the case that is relevant here) but it was also denied a status quo order based on *Locomotive Engineers* v. *M.-K.-T. R. Co.*, 363 U.S. 528 (1960)—*i.e.*, an order prohibiting carrier action pending determination of the parties' minor dispute. See 290 F.2d, at 885. In the *Illinois Central* case, on the other hand, the court required the carrier to preserve the "status quo" pending a determination of the parties' minor dispute; an adjustment board eventually determined that dispute in the union's favor; and at that point entry of a status quo order based on Section 6 was quite properly held to be appropriate. See 398 F.2d, at 975, 976, 979.

> "... the prohibitions of [Sections 2 Seventh and
> fall short of unilateral changes made in accordan
> with the terms of the applicable agreements and a
> limited to changes in those working conditions whi
> are embodied in the agreement. See Williams v. Jac
> sonville Terminal Company. . . ." 248 F. 2d, at 41.

So too, in decisions set forth in the Appendix to ou
Petition for Certiorari, a number of District Courts hav
construed Section 6 in accordance with this Court's d
cision in *Williams*. For example, in *Railway Clerks*
Santa Fe R. Co., 50 CCH Lab. Cas. ¶ 19,299 (N.D. Il
1964), Pet. App. 40a-46a, the District Court ruled that th
"fact that the Clerks have demanded from Santa Fe, in
notice duly served under Section 6 . . . , a rule which woul
limit Santa Fe's right to abolish positions under any cir
cumstances can have no effect on the rights of Santa F
and the Clerks unless and until such rule actually become
a part of the agreement between them." (Pet. App. 45a.
And in *Flight Engineers* v. *Western Air Lines*, 43 CCH
Lab. Cas. ¶ 17,064 (S.D. Calif., 1961), Pet. App. 47a-55a
in which an airline had changed the qualifications required
of flight engineers during the pendency of a Section 6
notice, the District Court held that the airline had not vio
lated Section 6 because

> "... the prohibitions of Section 6 against changes in
> rules or working conditions pending bargaining . . .
> apply only to rules and working conditions previously
> fixed by collective bargaining agreements. *Williams* v
> *Jacksonville Terminal Co. . . .*" (Pet. App. 54a-55a.)

See, also, *Brotherhood of Railroad Trainmen* v. *Illinois*
Terminal R. Co., No. 66 C 96 (3), E. D. Mo., May 24, 1966
(unreported), Pet. App. 56a-59a; and *Transportation-Com-*
munication Employees Union v. *Illinois Central R. Co.*, Civ.

No. 4192, S.D. Miss., Oct. 4, 1967 (unreported), Pet. App. 60a-63a.[12]

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[12] In dissenting in *Rutland Ry. Corp.* v. *Brotherhood of Locomotive Eng.*, *supra*, 307 F. 2d, at 42, Mr. Justice, then Judge, Marshall, in a footnote, expressed in general terms the view that the "preferable" construction of Section 6 is that "changes in existing conditions which are the subject of a major dispute are forbidden whether or not they are arguably authorized by the collective agreement," while observing that a contrary view was "arguable." *Id.*, at 44, n. 11. As we read the dissent, however, it dealt fundamentally with the fairness of the Rutland's conduct in the circumstances of the case. The basic thrust of the dissent was that where the *carrier* serves a Section 6 notice to change an existing agreement, it may not thereafter take action in reliance upon that existing agreement but rather must abide the outcome of negotiations under the statutory major dispute provisions. Thus, the dissent stated that "[t]he reliance placed by Rutland . . . upon the collective agreement is utterly inconsistent with the [carrier's] Section 6 notice, for Rutland intended by that notice to terminate and do away with the very same contractual provisions which are now so strenuously relied upon. . . . I dare say that if this were a commercial contract with a 30 day termination provision, we would not show such solicitude for one who invoked the termination procedure but later claimed the agreement was still in effect when the other party refused to meet his demands for a new contract." *Id.*, at 46. In addition, the dissent focused upon the consideration that the rights claimed under the contract were only arguably authorized. *Id.*, at 44-46. In the case at bar, of course, it is the union, not the carrier, that has attempted to change the existing agreement; and the decision of the adjustment board has confirmed that the carrier's contractual right was not "arguably authorized," but *was* authorized.

The oral opinion in *Spokane, Portland & Seattle R. Co.* v. *Order of Railway C. & E.*, 265 F. Supp. 892 (D.D.C., 1967), rendered after the decision of the District Court in the case at bar, contained statements that appear to conflict with the generally accepted interpretation of Section 6 described in the text above. However, the conflicting implications of that opinion were negatived by the District Court when it entered its order pursuant to the opinion (Pet. App. 64a-67a). More recently, in a case in the Northern District of Illinois, a District Court rendered a decision that goes even farther than did the decision below: *Illinois Central R. Co.* v. *Brotherhood of Locomotive Engineers*, No. 68 C 1382, Apr. 24, 1968 (N.D. Ill.). In that case, the District Court held that after the service of a Section 6 notice proposing an agreement banning the training of certain personnel in the operation of locomotives, a railroad was obliged to discontinue such training even though the training program had been instituted *before* the service of the Section 6 notice and even though the railroad claimed the existing agreement did not restrict its right to institute the program. As we read it, that decision nullifies the express provision of Section 2 Seventh limiting the obligations of a carrier in this regard, prior to service of a Section 6 notice, to refraining from changing "rates of pay, rules, or working conditions . . . as embodied in agreements." See p. 19, n. 10, *supra*.

In sum, the decision below is flatly contrary to the commonly accepted understanding of Section 6 reflected for years in Mediation Board communications, instructions and reports and in numerous judicial decisions beginning with this Court's decision in *Williams*.

3. *The decision below is contrary to the intent of the Congress manifested in the text and scheme of the Railway Labor Act and confirmed by its legislative history.*

Neither the terms of the Railway Labor Act nor its legislative history afford any justification for the departure in this case from the commonly accepted understanding of Section 6. On the contrary, the wording of Section 6, the scheme of the Act and the legislative history all confirm the correctness of that understanding. They demonstrate that the decision below is contrary to the intent of the Congress.

The theory of the decision below apparently was that on the day that respondent served its Section 6 notice, the fact that only Lang Yard and Dearoad were reporting points was among the "working conditions" of the employees for purposes of Section 6. Two months before the notice was served, however, the adjustment board confirmed that under the parties' existing agreement the Shore Line could designate any point as a reporting point. Thus, on the day that respondent served its Section 6 notice, Shore Line employees worked subject to the railroad's right to change reporting points. In that sense, those were the "conditions" under which the employees worked.

Thus, the question is whether the "working conditions" frozen by Section 6 are those more-or-less transitory conditions that happened to prevail in the application of the parties' agreement on the particular day that a Section 6 notice is served, or those more fundamental relationships created by the parties' agreement which the Mediation Board refers to as the parties' "rights." (See p. 16, *supra*.)

As is perhaps generally the case with statutes involved in litigation that reaches this Court, the language of Section 6 was not tooled with such precision as to provide an inescapably clear answer to this question. The difficulty arises from the fact that Congress, in the status quo sentence of Section 6, did not explicitly define *what* "rates of pay, rules, or working conditions" were to be maintained during exhaustion of the major disputes procedures of the Act. Yet *some* limitation must be interpolated, for no one suggests that service of any Section 6 notice respecting *any* subject serves to freeze *all* "rates of pay, rules, or working conditions" no matter how unrelated to the notice.

The question, then, is whether other language in Section 6, other provisions in the statute, and legislative history tell us what sort of "rates of pay, rules, or working conditions" the Congress had in mind. We think it clear that they do. We begin with Section 6 itself. An important guide to legislative intent is found in the first sentence of that section, which defines the circumstances in which the various provisions of Section 6 are applicable. The first sentence provides that the parties must give thirty days' "notice of an intended change *in agreements* affecting rates of pay, rules, or working conditions . . ." (45 U.S.C. § 156) (emphasis added). The second sentence—the status quo provision—then refers back to the first sentence in defining the status quo obligation. The second sentence provides that "in every case where *such* notice of intended change has been given"—that is, in every case where "notice of an intended change *in agreements* affecting rates of pay, rules, or working conditions" has been given—"rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon . . ." (45 U.S.C. § 156) (emphasis added). In this context, the most reasonable reading of that provision is that the parties are not to change "rates of pay, rules, or working conditions" *as affected by the agreement sought*

to be changed—a natural carrying over of the related language in the first sentence of Section 6 referring to changes "in agreements affecting rates of pay, rules, or working conditions." If the Congress intended a different limitation—namely, if the Congress meant that all "rates of pay, rules, or working conditions" are to be frozen so long as they fall within the general subject matter of the agreement and happen to exist at the time of service of the notice even though subject to change under the agreement—the language it chose was singularly inapt to express that intent.

In this case, in view of the adjustment board decision (pp. 5-6, *supra;* A. 110), it is perfectly clear that the parties' agreements affect reporting points in only one way: under the parties' agreements the Shore Line is free to establish reporting points wherever it deems it advisable. The Shore Line's actions have not altered that situation. The Shore Line's actions, accordingly, did not violate the status quo provision of Section 6.

This conclusion is confirmed when one looks beyond the terms of Section 6 itself. The ruling below, impairing as it does rights derived under collective bargaining agreements, is at war with the central policy of the Act—the establishment and protection of such agreements. Thus, as this Court observed this past term, the "heart of the Railway Labor Act is the duty, imposed by § 2 First upon management and labor, 'to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions. . . .'" *Trainmen* v. *Terminal Co.*, No. 69, O.T. 1968, slip opinion, p. 8. Section 2 Seventh of the Act (added to the Act in 1934) provides, accordingly, that "no carrier . . . shall change the rates of pay, rules, or working conditions of its employees, as a class *as embodied in agreements* except in the manner prescribed in such agreements or in Section 6 . . ." (45 U.S.C.

§ 152 Seventh) (emphasis added). Consistently with that primary obligation, Section 6 provides for service of a notice of "an intended change *in agreements*" (45 U.S.C. § 156) (emphasis added). Following the service of such a notice,

> "The parties must confer, § 2 Second, and if conference fails to resolve the dispute, either or both may invoke the services of the National Mediation Board, which may also proffer its services *sua sponte* if it finds a labor emergency to exist. § 5 First. If mediation fails, the Board must endeavor to induce the parties to submit the controversy to binding arbitration, which can take place, however, only if both consent. §§ 5 First, 7. If arbitration is rejected and the dispute threatens 'substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President,' who may create an emergency board to investigate and report on the dispute. § 10. While the dispute is working its way through these stages, neither party may unilaterally alter the *status quo*. §§ 2 Seventh, 5 First, 6, 10." *Trainmen* v. *Terminal Co., supra,* slip opinion, at 8.

In short, the making and maintaining of *agreements* is the central objective of an elaborate statutory scheme for handling "major" disputes.

In view of that statutory scheme, it would be startling to discover that the Congress had provided that one party or the other to a collective bargaining agreement could alter the parties' respective rights, as they exist under that agreement, simply by serving a proposal to change the agreement. The Congress intended no such thing. It intended the contract to govern the parties' rights and duties

until they either agree to its modification or exhaust the statutory procedures designed to produce agreement. That is the function of the status quo provision of Section 6—to preserve the contract after the contract itself has expired and after the expiration of the thirty-day notice period prescribed by Section 6, pending exhaustion of major dispute procedures with respect to any proposed change in the contract. "The very purpose of § 6 is to stabilize relations by artificially extending the lives of agreements for a limited period regardless of the parties' intentions." *Manning* v. *American Airlines, Inc., supra,* 329 F. 2d, at 34; *Brotherhood of Railroad Trainmen* v. *Akron & B.B.R. Co., supra,* 385 F. 2d, at 593.[13]

This view is confirmed by the legislative history of the Railway Labor Act. As enacted in 1926, the Act was drafted and agreed to by representatives of the railroads and the unions.[14] Section 6 of the Act, however, was taken almost verbatim from Section 6(A) of the Howell-Barkley bill of 1924-1925.[15] During the hearings on that bill—which was

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[13] This, of course, is the answer to any contention that under our construction of Section 6, Section 6 adds nothing to the contract. On the contrary, under our construction of Section 6, the status quo provision of Section 6 serves the extremely important purpose of prolonging "agreements subject to its provisions regardless of what they say as to termination." *Manning* v. *American Airlines, Inc., supra,* 329 F.2d, at 34; *Brotherhood of Railroad Trainmen* v. *Akron & B. B. R. Co., supra,* 385 F.2d, at 593.

[14] See S. Rep. No. 606, 69th Cong., 1st Sess. (1926), pp. 2, 6; S. Rep. No. 222, 69th Cong., 1st Sess. (1926), pp. 2, 6; H.R. Rep. No. 328, 69th Cong., 1st Sess. (1926), pp. 1-3.

[15] S. 2646, 68th Cong., 1st Sess.; H.R. 7358, 68th Cong., 1st Sess. (printed in 65 Cong. Rec. 7883). Section 6(A) provided: "(A) Carriers and the representatives of the employees or subordinate officials shall give at least 30 days' written notice of an intended change affecting rates of pay, rules or working conditions, and the time and place for conference between the representatives of the parties interested in such intended change shall be agreed upon within 10 days after the expiration of said notice, and said time shall be within 20 days after the expiration of said notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Board of

supported by the unions but opposed by the railroads—the unions' principal spokesman, Donald Richberg, explained what later became Section 6 of the Railway Labor Act in detail. Richberg was introduced to the Senate Committee on Commerce, before which he testified at length, by D. B. Robertson, the BLF&E's President at the time. Robertson told the Committee, during hearings on the measure,[16] that

> ". . . This bill simply presents an industrial code for the railroads made up from the written and unwritten laws that have governed industrial relations on the railroads for many years.
>
> "The basis of these relations lie in agreements arrived at through collective bargaining . . ." 1924 *Senate Hearings*, p. 16.

Richberg then proceeded to explain the fundamental importance of the parties' agreements in the scheme envisaged by the draftsmen of the measure. His explanation leaves no room for doubt that the proponents intended that the parties' contracts should continue to govern the parties' rights during the period of conferences and mediation covered by the proposed Section 6(A). Richberg testified:

> "Now, just a word as to the fundamentals, because I think the atmosphere of this law is the most important part of its consideration.
>
> "It is recognized that the good order of society rests upon contract, that democratic government enforces

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Mediation and Conciliation have been requested by either party, or said board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as herein required by section 5, by the Board of Mediation and Conciliation, unless a period of 10 days has elapsed after termination of conferences without request for or proffer of the services of the Board of Mediation and Conciliation."

[16] *Hearings on S. 2646 before the Senate Committee on Interstate Commerce*, 68th Cong., 1st Sess. (1924), hereinafter referred to as 1924 *Senate Hearings*.

primarily the voluntary obligations of a man to his fellow man or to the community. The rights of minorities are protected by the agreement of majorities and the will of majorities is enforced through the expressed or implied agreement of minorities to obey majority rules. Any other theory of government is autocratic or anarchistic.

"Therefore any compulsion exerted by Government in a democracy must be based on contract. The mutual obligations of employer and employee which are to be enforced by law must be obligations that arise out of the voluntary agreements of employer and employee. Thus we find that employers and employees have a duty to society and to the Government, as well as to themselves, to 'exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes arising out of the application of said agreements.' I am now quoting from the bill. The statement of this duty in the language just quoted from section 2 is the foundation principle of the railway labor act.

* * * * *

"After establishing this fundamental obligation it becomes necessary to provide the means for obtaining and changing agreements and for adjusting disputes arising under agreements. . . .

* * * * *

"Changes of agreements: An agreement that can be changed without notice is really no agreement at all. Certainly the power on the one hand and fear on the other hand of arbitrary change will breed discord, not harmony. Therefore it is provided in section 6 that

either party 'shall give at least 30 days' written notice of an intended change' and that a time and place of conference shall be agreed upon. Thereafter a change is prohibited until the machinery for peaceful adjustment has been fully utilized. . . ." 1924 *Senate Hearings*, pp. 17-20.

Richberg went on to make clear that, rather than suspend the parties' agreements during negotiations, the intended effect of proposed Section 6(A) would be to extend or prolong those agreements until the statutory procedures had been completed:

"This prohibition against arbitrary action is a clear necessity in founding industrial peace upon contractual obligations. While an agreement is in force, of course, it should not be changed without consent. If an agreement is about to expire then either party desiring a change should be required to give ample opportunity for negotiation of a new agreement.

"The purpose of this provision is, as you will see, to prevent a situation drifting up to the date of expiration of an agreement and then peremptorily demanding, the one side or the other, a change in the agreement. Under the provisions of this bill, if either side wants a change, since 30 days' notice must be given if they want a change to take place at the end of the existing agreement, they must start negotiations beforehand.

* * * * *

". . . [T]he employees, as an organized group, can not under the provisions of this act repudiate a con-

tract and attempt to enforce a change by arbitrary action. . . .

* * * * *

"Senator DILL. And if at the end of the year neither side gives notice, it is your understanding, under this law, the contract would continue for another year?

"Mr. RICHBERG. No; my understanding is it would continue until a change was brought about; that is, it would continue somewhat like holding over under a lease that had expired. There being no other agreement negotiated, it would be further extended.

"Mr. ROBERTSON. I might supplement that by saying that the agreement to arbitrate provides that both parties agree as to the length of time the award will remain in effect. The practice now is in written agreements to have both parties write in what is known as a terminating clause, which continues it in effect subject to 30 days' notice.

"Senator DILL. I was speaking of contracts where there had been no arbitration, where contracts were going to expire, and the agreement was that they must give 30 days' notice, and my question went to this point, whether or not if there were no notice it was understood there would be no new contract, or whether the old contract would simply continue?

"Mr. ROBERTSON. On railroads where agreements are reached without entering into arbitration the same situation prevails. It is the practice today, to write in a certain terminating clause which continues the agreement in effect for a year, subject to 30 days' notice.

"Senator DILL. And if they do not give notice it goes right on?

"Mr. ROBERTSON. Yes, sir." 1924 *Senate Hearings*, pp. 20, 22-23.

Richberg concluded this portion of his testimony by stressing again the fundamental importance of the parties' agreements in the scheme envisaged by the draftsmen of the proposed legislation:

> "I will say frankly that the act is drawn on the theory that nothing is accomplished in matters of this kind by attempting to swing a club, except the compulsion to live up to the agreement and to make agreements." 1924 *Senate Hearings*, p. 24.

Two years later, during hearings on the bill that became the 1926 Act, Richberg confirmed that the basic philosophy of the proposed legislation had not changed, leaving no doubt that the draftsmen of the 1926 Act intended that the parties' agreements should measure their rights. In the hearings before the House Committee on Commerce,[17] Richberg testified:

> "... All through the act is the theory that the agreement is the vital thing in life. I often quote, and I will do so here—I believe it is from Chesterton—a statement that 'Upon the slender thread of contract hangs all our civilization.' I think that is really a rather profound utterance. All the social relations of men, their ability to get along together, their ability to work out these enormous social undertakings that we have in the world of business and government, all rest upon the slender thread of contract. Contract is the foundation of all our successful relations between man

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[17] *Hearings on H.R. 7180 before the House Committee on Interstate and Foreign Commerce*, 69th Cong., 1st Sess. (1926), hereinafter referred to as 1926 *House Hearings*.

> and man. And that we seek to preserve in here, knowing that the most futile way to improve humanity is to try to compel humanity to be better, and that persuasion and contract are the means to preserve harmony and to move forward." 1926 *House Hearings*, pp. 15-16.

Richberg also stated with respect to Section 2 First (to the effect that it is the duty of both carriers and their employees "to exert every reasonable effort to make and maintain agreements") that

> "... there is the foundation of the entire legislation sought, and that is in agreement." 1926 *House Hearings*, p. 11.

That was not the testimony of a man who intended to write a law that would permit parties to an agreement to destroy each other's rights as they exist under the agreement by the simple unilateral act of proposing a change in the agreement.

The railroads' spokesman, Alfred P. Thom, agreed with Richberg's views. Reviewing "the leading principles of the bill," he stated:

> "It provides in the first place that all disputes shall be adjusted by agreement, if possible. That the relationship of the parties shall be controlled by agreements." 1926 *House Hearings*, p. 113.[18]

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[18] In the 1926 Act, what has come to be called a "major dispute," see *Elgin, J. & E.R. Co.* v. *Burley*, 325 U.S. 711, 723 (1945), was referred to, without use of the word "agreement," in Section 5 First (b) as a dispute "in respect to changes in rates of pay, rules, or working conditions," and in Section 6 as a dispute over "an intended change affecting rates of pay, rules, or working conditions." 44 Stat. 580, 582 (1926). Thus, in the 1926 Act the phrase "rates of pay, rules, or working conditions" was used to mean approximately the same thing as "agreement"; the phrase "in agreements" was not added to Section 6 until 1934. See pp. 39-40, *infra*. Similarly, during their explanation of the 1926 bill to the House and Senate Committees on Commerce, Richberg and Thom both tended to

If that history left any room for doubt as to the intent of the 1926 Congress, Congress settled the matter in 1934. Among the 1934 amendments, two are principally relevant here. One was the addition of Section 2 Seventh to the Act, providing that "[n]o carrier . . . shall change the rates of pay, rules, or working conditions of its employees, as a class *as embodied in agreements* except in the manner prescribed in such agreements or in Section 6. . . ." 48 Stat. 1188 (1934) (emphasis added). The second was the addition of the phrase "in agreements" to Section 6 so that it reads as it does now—that "[c]arriers and representatives of the employees shall give at least thirty days' written notice of an intended change *in agreements* affecting rates of pay, rules, or working conditions," and that "[i]n every case where such notice of intended change has been given, . . . rates of pay, rules, or working conditions shall not be altered by the carrier. . . ." 48 Stat. 1197 (1934) (emphasis added).

The railroads proposed the addition of the phrase "as a class as embodied in agreements" to the proposed Section 2 Seventh and the corresponding addition of the reference to "agreements" to Section 6. The railroads' principal spokesman testified before the Senate Commerce Committee [19] that the railroads had proposed their amendments

use the phrase "rates of pay, rules, and working conditions" interchangeably with "agreement." For example, Thom explained the basic scheme of the Act before the Senate Committee in terms of the distinction between what are now known as "minor" and "major" disputes, stating that if a dispute "relates to changes in rates of pay, rules, or working conditions, to *new agreements with respect to these matters*, then, as I say, that must be considered in conference," etc. *Hearings on S. 2306 before the Senate Committee on Interstate Commerce*, 69th Cong., 1st Sess., p. 11 (emphasis added). Similarly, Richberg explained the provisions of the Act in the same way before the House Committee, characterizing a dispute over a change in "rates of pay, rules, or working conditions" as that term was used in the bill (1926 *House Hearings*, pp. 3, 5) as "a dispute over a change *of agreement*" (1926 *House Hearings*, p. 71) (emphasis added).

[19] *Hearings on S. 3266 before the Senate Committee on Interstate Commerce*, 73d Cong., 2d Sess. (1934), hereinafter referred to as 1934 *Senate Hearings*.

"because the working conditions are not defined in the act. *They are covered by agreement,* and we believe this is a helpful suggestion." 1934 *Senate Hearings,* p. 65 (emphasis added); see also p. 73. Commissioner Eastman, the principal proponent of the 1934 Railway Labor Act revision, agreed to the railroads' proposed amendments, stating that they were "an improvement and should be made." 1934 *Senate Hearings,* pp. 151, 155. In short, the purpose of the amendments was to make explicit what Congress had intended all along—that "rates of pay, rules, or working conditions" as used in Section 6 meant the parties' rights and duties under existing agreements. See *Williams* v. *Terminal Co., supra,* 315 U.S., at 399-400.

In these circumstances, it seems abundantly clear that the Congress did not intend in Section 6 to create a vehicle by which unions or carriers, unilaterally, might destroy each other's rights as they exist under their contracts. On the contrary, the Congress meant to preserve those rights pending negotiations for change. Thus, the "working conditions" to which Shore Line employees were subject on January 27, 1966, when the BLF&E served its Section 6 notice, were what the adjustment board had said they were under the existing agreements—employees worked subject to the Shore Line's right to establish reporting points wherever the railroad deemed it desirable.

4. *The decision below will cause protracted delay in the modernization of railroad operations, will jeopardize rights of both carriers and employees, and will stultify collective bargaining.*

The decision below is hostile not only to the terms and legislative history of the Railway Labor Act, but also to its underlying policy of promoting tranquil relations between labor and management (see 45 U.S.C. § 151a), as well as to the National Transportation Policy—"to pro-

mote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation . . . all to the end of developing, coordinating and preserving a national transportation system . . . adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." 54 Stat. 899 (1940).

As to the latter, the potential impact of the decision is clear—protracted delays in the institution of operational changes by railroads designed to improve the efficiency and safety of service to the public. "[T]he procedures of the [Railway Labor] Act are purposely long and drawn out, based on the hope that reason and practical considerations will provide in time an agreement that resolves the dispute." *Railway Clerks* v. *Florida E. C. R. Co.*, 384 U.S. 238, 246 (1966). Under the decision below, unions can block operational changes for as long as it takes to exhaust those "long and drawn out" procedures, simply by serving a Section 6 notice proposing restrictions on the right to make changes.

That kind of protracted delay has been the result in the case at bar. The Shore Line sought to establish outlying assignments in order to provide improved service to shippers at reasonable cost. (See pp. 4, 6-7, *supra*.) The carrier refrained from instituting the change for *four years* during negotiations on the union's first Section 6 notice and during consideration of the dispute by the adjustment board. But then, when the adjustment board confirmed the carrier's right to establish such assignments and well after the union had withdrawn its first Section 6 notice, the carrier finally decided to exercise that right, only to be met with a second Section 6 notice and the claim, so far sustained, that the move must be foregone for yet another lengthy period.

Indeed, under the principles applied by the courts below, it is difficult to see how the Shore Line could ever assure

itself of the right to establish outlying assignments in its discretion, regardless of the benefits that might be accorded to the union and the employees it represents in exchange for that right. Suppose that in the negotiations upon the Section 6 notice served by the BLF&E the parties enter into an agreement which once again confirms the right of the Shore Line to establish such outlying terminals in exchange for various concessions by the Shore Line on other matters. What would prevent the union from serving a *third* Section 6 notice proposing once again to change the agreement so as to prohibit such actions, and then contending that the status quo provision prevents the Shore Line from establishing outlying assignments under its new agreement just as the instant notice was held to prevent the Shore Line from taking such action even though permitted by its present agreement?

Similar examples can be cited respecting other operational changes of broader significance to the shipping public. Thus, *Transportation-Communication Employees Union* v. *Illinois Central R. Co.* (Pet. App. 60a-63a) involved the installation by a railroad of expensive computerized equipment to control and record traffic movements. The Telegraphers served the carrier with a notice proposing an agreement regulating the use of the equipment, and then sought an injunction on the theory that the status quo provision of Section 6 precluded the railroad from discontinuing obsolete methods of communication and traffic control and using the new equipment while the union proposal was pending. The court that decided the instant case apparently would have granted such an injunction, thereby disabling the carrier from modernizing its operations even though it was free to do so under its contract with the union.[20] In an industry in need of sub-

[20] Numerous additional examples could be given. One that has come to our attention recently involves the "White House Agreement" of June 24, 1964, between the nation's carriers and the operating brotherhoods including

stantial modernization of equipment and operations,[21] such a result is unacceptable unless required by overriding considerations of labor relations policy.

But the impact of the rule adopted by the lower courts upon labor relations would, if anything, be even more unsettling than its impact upon railroad operations. The predictable impact would be a sharp increase in the number of meritless union Section 6 notices. As matters stood prior to the *Shore Line* decision, the service of a notice as to which the union had no genuine expectation of securing agreement served no purpose, for once the procedures of the Act were exhausted the union would not regard the railroad's rejection of the demand as an appropriate occasion for a strike. Under *Shore Line*, however, a union, by serving a notice, may freeze a carrier in its efforts to institute operational changes that may be of critical importance to it, thus obliterating or suspending existing rights and achieving unilaterally what the union may never hope to secure by agreement. Such a wrong-headed result is offensive to common sense and is incompatible with the Act's purpose of rationalizing labor relations in the industry. It would be wholly inconsistent with the fundamental purpose of the relevant provisions of the Act, to "avoid any interruption to commerce or to the operation of any carrier engaged therein" by requiring carriers and unions alike "to

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the BRT. Under the White House Agreement, the carriers obtained the right to discontinue the last yard engine at points where yard engines are no longer needed, in exchange for various pay adjustments and other concessions on the carriers' part. Subsequently, the BRT served the Texas and Louisiana Lines of the Southern Pacific with a notice proposing the abrogation of the relevant portions of the White House agreement. Under the principles applied below, was the carrier obliged not to discontinue yard engines under the provisions of the White House Agreement during the pendency of the proposal, and obliged nevertheless to continue paying employees in accordance with the pay provisions of the White House Agreement? The BRT contended that such was required by Section 6, and filed time claims based on that contention.

[21] See Ex Parte No. 256, *Increased Freight Rates*, 329 I.C.C. 854, 873-874 (1967).

exert every reasonable effort to make and maintain *agreements*" (45 U.S.C. § 151a(1), 152 First) (emphasis added). As this Court has observed, the "processes of bargaining and mediation" called for by the Act would "become a sham" if a party "could unilaterally achieve what the Act requires be done by the other orderly procedures." *Railway Clerks* v. *Florida E. C. R. Co., supra,* 384 U.S., at 247.

Moreover, the principles applied in the decision below would be destructive of employee as well as of employer rights. The union has contended at length that the status quo provisions of the Act apply to employers and unions alike—that Congress intended "the *status quo* . . . to be maintained by all parties . . ." (Br. Opp. 6). But under most if not all existing contracts, for example, the employees have a right to exercise seniority under designated circumstances so as to transfer to positions thought to be more desirable. Presumably, if the carrier served a Section 6 notice to abolish those seniority rights the status quo provision in Section 6 would prevent the exercise of those rights while negotiations were in progress, if the decision below is correct. Wage increases pursuant to "escalation" provisions in wage agreements likewise could be prevented merely by serving a Section 6 notice proposing to eliminate those provisions. These examples could be multiplied endlessly. The point is that the decision below is completely inconsistent with the philosophy of collective bargaining embodied in the Railway Labor Act. Neither a union nor a carrier should be permitted to deprive the other of rights under the existing contract merely by making a proposal to change that contract. If the contract is to be changed, that must be done by agreement or otherwise in accordance with the procedures specified in the Act. As union counsel testified in hearings with respect to issues involved in this Court's decision in *Telegraphers* v. *Chicago & N. W. R. Co.*, 362 U.S. 330 (1960), "as everyone knows, a proposal under

the Railway Labor Act is the *starting point, not the end, of collective bargaining.*" *Hearings on S. 3548 before the Special Subcommittee of the Senate Committee on the Judiciary*, 86th Cong., 2d Sess. (1960), p. 186 (emphasis added).

Conclusion

For the foregoing reasons, the decision of the Sixth Circuit should be reversed.

Respectfully submitted,

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